

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Rasenberger	Team: Squad #07	CCRB Case #: 202000571	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/07/2020 10:35 PM	Location of Incident: Outside of 2772 Fulton Street, Brooklyn	18 Mo. SOL 2/21/2022	Precinct: 75		
Date/Time CV Reported Wed, 01/08/2020 8:40 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 01/22/2020 11:29 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joshua Navarro	16066	957891	075 PCT
2. POF Marina Andrade	00278	959455	075 PCT
3. POM Billy Dill	03000	929737	075 PCT
4. LT Winston Willabus	00000	935969	081 DET

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Oscar Mancilla	00456	959782	075 PCT
2. POM Lalchan Singh	31887	955499	075 PCT
3. POM Daneshwar Sukhra	15028	966356	075 PCT
4. POM Michael Amello	17857	949999	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Joshua Navarro	Abuse: Police Officer Joshua Navarro stopped § 87(2)(b)	
B . LT Winston Willabus	Abuse: Lieutenant Winston Willabus stopped § 87(2)(b)	
C . POM Joshua Navarro	Abuse: Police Officer Joshua Navarro searched § 87(2)(b)	
D . POM Joshua Navarro	Abuse: Police Officer Joshua Navarro frisked § 87(2)(b)	
E . LT Winston Willabus	Abuse: Lieutenant Winston Willabus stopped § 87(2)(b)	
F . POF Marina Andrade	Abuse: Police Officer Marina Andrade frisked § 87(2)(b)	
G . POM Billy Dill	Abuse: Police Officer Billy Dill stopped § 87(2)(b)	
H . LT Winston Willabus	Abuse: Lieutenant Winston Willabus stopped § 87(2)(b)	
I . POM Billy Dill	Abuse: Police Officer Billy Dill frisked § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J . POM Joshua Navarro	Force: Police Officer Joshua Navarro used physical force against § 87(2)(b)	
K . POM Joshua Navarro	Force: Police Officer Joshua Navarro used physical force against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

## Case Summary

On January 22<sup>nd</sup>, 2020 the CCRB received log 2020-1442 from the Internal Affairs Bureau Command Center [BR 1], which contained the following complaint on behalf of § 87(2)(b) and § 87(2)(b)

On January 7<sup>th</sup>, 2020, at about 10 p.m., § 87(2)(b) who was eighteen years old, § 87(2)(b) and another friend, § 87(2)(b) all of whom were sixteen years old, walked to La Vega grocery, located at the intersection of Fulton Street and Miller Avenue in Brooklyn. § 87(2)(b) and § 87(2)(b) entered the grocery store, while § 87(2)(b) and § 87(2)(b) remained just outside. Officer Joshua Navarro and Lieutenant Winston Willabus, both assigned to the 75<sup>th</sup> Precinct at the time, approached and stopped § 87(2)(b) [Allegation A: Abuse of Authority – Stop, § 87(2)(g) Allegation B: Abuse of Authority – Stop, § 87(2)(g) PO Navarro searched § 87(2)(b) jacket pocket [Allegation C: Abuse of Authority – Search, § 87(2)(g) and then continued to frisk § 87(2)(b) other pockets [Allegation D: Abuse of Authority – Frisk, § 87(2)(g) Very shortly after PO Navarro and Lt. Willabus initiated the encounter, Officers Billy Dill and Marina Andrade of the 75<sup>th</sup> Precinct became involved. PO Andrade stopped and allegedly frisked § 87(2)(b) [Allegation E: Abuse of Authority – Stop, § 87(2)(g) Allegation F: Abuse of Authority – Frisk, § 87(2)(g) § 87(2)(b) exited the grocery store seconds later. PO Dill working alongside Lieutenant Willabus allegedly stopped and frisked him [Allegation G: Abuse of Authority – Stop, § 87(2)(g) Allegation H: Abuse of Authority – Stop, § 87(2)(g) Allegation I: Abuse of Authority – Frisk, § 87(2)(g) PO Dill discovered a knife in § 87(2)(b) possession and arrested him. Shortly thereafter, PO Andrade attempted to place § 87(2)(b) under arrest. § 87(2)(b) allegedly tried to prevent PO Andrade from handcuffing § 87(2)(b) Seconds later, PO Navarro punched § 87(2)(b) in the head twice [Allegation J: Force – Physical Force, § 87(2)(g) and then forcibly took § 87(2)(b) to the ground [Allegation K: Force – Physical Force, § 87(2)(g) § 87(2)(b) and § 87(2)(b) were each charged with Disorderly Conduct, while § 87(2)(b) was charged with Obstruction of Governmental Administration, Resisting Arrest, and Disorderly Conduct.

The CCRB received eight body-worn camera videos for this case, distributed across two requests [BR 2 and 3]. § 87(2)(g), § 87(4-b)

§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

## Findings and Recommendations

**Allegation A: Lt. Winston Willabus stopped** § 87(2)(b)

**Allegation B: Police Officer Joshua Navarro stopped** § 87(2)(b)

**Allegation C: Police Officer Joshua Navarro searched** § 87(2)(b)

**Allegation D: Police Officer Joshua Navarro frisked** § 87(2)(b)

**Allegation E: Lt. Winston Willabus stopped** § 87(2)(b)

**Allegation F: Police Officer Marina Andrade frisked** § 87(2)(b)

**Allegation G: Police Officer Billy Dill stopped** § 87(2)(b)

**Allegation H: Lt. Winston Willabus stopped** § 87(2)(b)

**Allegation I: Police Officer Billy Dill frisked** § 87(2)(b)

In their CCRB interviews [BR 4, 5, and 6], § 87(2)(b) and § 87(2)(b) all stated that on January 7<sup>th</sup>, 2020, shortly before 10 p.m., they walked from § 87(2)(b) house to

meet with another friend, § 87(2)(b) at her house – located at § 87(2)(b) in Brooklyn. All four friends then walked to La Vega grocery, located on at the intersection of Fulton Street and Miller Avenue. § 87(2)(b) and § 87(2)(b) entered the grocery store, while § 87(2)(b) and § 87(2)(b) remained outside and spoke to one another. § 87(2)(b) and § 87(2)(b) each denied that there were any bulges in either of their clothes. § 87(2)(b) noticed a marked NYPD SUV near the intersection of Fulton Street and Miller Avenue. The SUV continued down Fulton Street and passed § 87(2)(b) and § 87(2)(b). A few minutes later, § 87(2)(b) saw the same SUV again, now with a second NYPD SUV following closely behind. The two NYPD SUVs stopped at the same time, according to both § 87(2)(b) and § 87(2)(b). Two officers exited from each vehicle and approached § 87(2)(b) and § 87(2)(b).

All members of service interviewed for this case were consistent that Lt. Willabus and PO Navarro initiated the encounter, and that PO Andrade and PO Dill provided assistance after observing the beginning of the encounter. Lieutenant Willabus and PO Navarro were inconsistent as to when they first noticed – and what drew their attention to – § 87(2)(b) and § 87(2)(b). Lt. Willabus stated in his CCRB interview [BR 7] that he observed § 87(2)(b) and § 87(2)(b) walking across Fulton Street, as he and PO Navarro travelled down Miller Avenue in their RMP. § 87(2)(b) who was walking ahead of § 87(2)(b) and § 87(2)(b) noticed Lt. Willabus's vehicle. He then conspicuously moved in between § 87(2)(b) and § 87(2)(b). Lt. Willabus considered this movement “unnecessary” and out of the ordinary, and inferred that § 87(2)(b) was possibly trying to conceal himself or something on his person. § 87(2)(b) and § 87(2)(b) then all entered La Vega grocery. Lt. Willabus did not observe anything else suspicious about § 87(2)(b) or about § 87(2)(b) or § 87(2)(b) he did not notice any bulges in any of the three individuals' clothing. Lt. Willabus and PO Navarro stopped their car near the grocery store, and, after a few minutes, exited the vehicle and walked toward the entrance of the store. Lt. Willabus stated that his intention was to speak with the store workers, to determine whether the three individuals were committing any crimes.

PO Navarro stated during his CCRB interview [BR 8] that he first observed § 87(2)(b) as § 87(2)(b) was standing outside of La Vega grocery. PO Navarro could not recall whether § 87(2)(b) was alone at this time. He observed a large and “protruding,” but otherwise nondescript bulge in the chest pocket of § 87(2)(b) parka. He had no particular beliefs about the cause of the bulge, and did not believe he had achieved the requisite level of suspicion to conduct a “level-2” inquiry. He exited his vehicle, along with Lt. Willabus, and approached § 87(2)(b) to question him about the bulge. (PO Navarro was the only member of service interviewed that mentioned observing a bulge on § 87(2)(b) person. PO Andrade and Lt. Willabus both explicitly stated they did not observe any bulges in § 87(2)(b) clothing, and did not consider him to be suspicious.)

According to both § 87(2)(b) and § 87(2)(b) PO Navarro asked § 87(2)(b) and § 87(2)(b) where they were coming from and why they were waiting outside of the deli. PO Navarro then approached § 87(2)(b) more closely -- “getting in his face,” according to § 87(2)(b) – and asked him what was in his coat pocket. PO Andrade's testimony [BR 9] corroborates § 87(2)(b) and § 87(2)(b)'s account. § 87(2)(b) and § 87(2)(b) each stated that PO Navarro then frisked § 87(2)(b) coat pocket. According to § 87(2)(b) this pocket was empty. PO Navarro did not recall whether he immediately frisked § 87(2)(b) upon approaching him. He acknowledged questioning § 87(2)(b) about the contents of his jacket pocket; § 87(2)(b) replied that there was nothing in the pocket. At some point, according to PO Navarro, § 87(2)(b) verbally indicated that he was consenting to PO Navarro searching his jacket pocket; PO Navarro could not recall the words that § 87(2)(b) used. PO Navarro searched the pocket, and discovered that it contained crumpled up papers.

According to § 87(2)(b) PO Navarro then turned § 87(2)(b) around, so that he was facing the wall of La Vega grocery, and frisked § 87(2)(b) waistband and pants pockets. In footage obtained from La Vega grocery store [BR 10], between 00:13 and 00:30, PO Navarro appears to frisk both the left and right side of § 87(2)(b) jacket or pants. PO Navarro acknowledged that he



most likely frisked other parts of § 87(2)(b) clothing after determining that his jacket pocket contained nothing illegal. PO Navarro's understanding is that, after § 87(2)(b) consented to a search of his jacket pocket, PO Navarro was permitted to search other parts of his clothing, until § 87(2)(b) revoked the consent. After discovering nothing illegal in any other parts of § 87(2)(b) clothing, PO Navarro considered him free to leave. He acknowledged that § 87(2)(b) might not have been aware that he was free to end the encounter at this point.

§ 87(2)(b) stated that seconds after PO Navarro began interacting with § 87(2)(b) PO Andrade approached her and began touching her arms. PO Andrade then frisked her pockets. § 87(2)(b) acknowledged resisting slightly as PO Andrade conducted the frisk. PO Andrade denied frisking § 87(2)(b) and stated that she simply spoke to § 87(2)(b) and attempted to make her calm down. There is no footage of the beginning of PO Andrade's interaction with § 87(2)(b). At some point toward the end of the interaction, as seen in footage from La Vega grocery [BR 11], PO Andrade made some type of physical contact with § 87(2)(b).

There is some disagreement as to when and how § 87(2)(b) became involved in the incident. § 87(2)(b) stated in his CCRB interview [BR 5] that he'd been inside of La Vega grocery store for a few minutes when he noticed flashing police lights outside. He walked outside and saw PO Navarro and Lt. Willabus approaching § 87(2)(b) and § 87(2)(b). Almost immediately thereafter, PO Dill approached § 87(2)(b) and asked him what he had in his pockets. PO Dill then turned § 87(2)(b) around, so that he was facing the wall of the grocery store, and frisked his pockets. § 87(2)(b) provided a generally consistent account of this portion of the incident. § 87(2)(b) admitted to having a large kitchen knife in one of his pockets, but denied that PO Dill found the knife during the frisk; PO Dill, according to § 87(2)(b) found the knife after § 87(2)(b) had been in handcuffs for a period of time. After frisking § 87(2)(b) PO Dill handcuffed him, and informed him that he would have to come to the 75<sup>th</sup> Precinct stationhouse.

§ 87(2)(b) and Lt. Willabus were consistent that § 87(2)(b) dropped a kitchen knife onto the sidewalk almost immediately after exiting La Vega grocery. According to § 87(2)(b) this occurred about two minutes after PO Navarro had begun questioning him. Lt. Willabus stated that § 87(2)(b) dropped the knife as he exited La Vega grocery along with § 87(2)(b) and § 87(2)(b). Lt. Willabus denied that he or PO Navarro had made contact with any of the three individuals before this point. Lt. Willabus added that he considered the three individuals to be stopped or detained as soon as § 87(2)(b) dropped the knife, on the grounds that § 87(2)(b) possession of a weapon possibly implicated § 87(2)(b) and § 87(2)(b) in criminal activity. PO Dill stated during his CCRB interview [BR 12] that he observed the handle of a knife protruding from § 87(2)(b) pocket as he exited the store or shortly thereafter. PO Dill and § 87(2)(b) briefly struggled for control of the knife. PO Dill was able to confiscate the knife from § 87(2)(b) and then placed him into handcuffs. Finally, PO Andrade stated that when she and PO Dill exited their vehicle, § 87(2)(b) was already outside of La Vega grocery, along with § 87(2)(b) and § 87(2)(b). PO Andrade noticed a "long" and "hard" bulge in one of § 87(2)(b) pockets. Her understanding is that PO Dill discovered a knife in this pocket in the course of frisking § 87(2)(b).

Under NYPD PG 212.11, a Level 1 encounter comprises an officer's request for information from a civilian. The officer must have an objective credible reason to approach the civilian, but does not require suspicion of criminal activity. The objective is to gather information and not to focus on the person as a potential suspect. The officer may not ask accusatory questions, may not seek consent to search, and may not create a situation where a reasonable person would not feel free to leave.

A Level 2 encounter comprises the common law right of inquiry, conducted for the purpose of asking the civilian pointed or accusatory questions because the police officer has a founded suspicion that criminal activity is afoot. Upon a founded suspicion of criminality, the officer may ask accusatory questions and may seek consent to search however, consent must be voluntarily given. The officer may not create a situation – either by words or actions – where a reasonable person would not feel free to walk away.

A Terry Stop/Level 3 encounter is any encounter between a civilian and a uniformed member of service in which a reasonable person would not feel free to disregard the officer and walk away. A stop may only be conducted when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. A frisk is authorized when the member of the service reasonably suspects the person is armed and dangerous. This includes situations in which the officer observes something on the person that she/he reasonably suspect is a weapon. “Furtive movements” or mere presence in a “high crime area,” standing alone, are insufficient bases for a stop or frisk. Even when used in combination with other stop factors, the stopping officer must be able to specifically describe the suspicious nature of the “furtive movements” which s/he observed.

The suspect may be detained only as long as necessary to confirm or dispel an officer’s suspicion that s/he was committing, committed, or was about to commit a felony or Penal Law misdemeanor. Authority to detain the suspect ends when the tasks tied to the reason for the stop are completed or reasonably should have been completed. NYPD Patrol Guide § 212.11 [BR 13].

In *People v. Bora*, the court held that the test for determining whether an officer has seized someone, under the Fourth Amendment, is whether a reasonable person would believe, under the circumstances, that the officer’s conduct is a significant limitation on his or her freedom. Typically the inquiry involves a consideration of all the facts and a weighing of their individual significance, including whether the individual is prevented from moving, how many verbal commands are given, what is the content and tone of the commands, and how many officers are involved. *People v. Bora*, 83 N.Y.2d 531 [BR 14].

In *People v. Taveras*, the court held that undefinable bulges in a subject’s pocket – as opposed to his waistband -- are not considered a sufficient predicate for a frisk or search for a firearm. Defined bulges in the outline or configuration of a gun do warrant a frisk. *People v. Taveras*, 155 A.D.2d 131 [BR 15].

In *People v. Montero*, the court held that any reasonable fear for an officer’s safety abates once a protective frisk of a subject reveals a bulge which neither looks nor feels like any identifiable weapon. Once an officer’s reasonable fear for his safety abates, he is required to discontinue his search, and any subsequent frisk or search will be considered improper. *People v. Montero*, 149 A.D.2d 628 [BR 16].

In *People v. Durant*, the court held that simply because a subject is standing alongside someone alleged to have committed a crime – to wit, possessing a firearm – does not provide reasonable suspicion that the subject has committed or is about to commit a crime. Being in the presence of a suspected criminal, standing alone, does not justify a stop or frisk of the subject. *People v. Durant*, 175 A.D.2d 176 [BR 17].

The investigation has determined that PO Navarro and Lt. Willabus initiated the encounter with § 87(2)(b) as § 87(2)(b) stood outside of the La Vega grocery store with § 87(2)(b). The investigation does not credit Lt. Willabus’s testimony that the encounter began when § 87(2)(b) and § 87(2)(b) exited La Vega grocery. No victim or officer interviewed for this case corroborated this portion of Lt. Willabus’s statement. Instead, all victims and all officers besides Lt. Willabus stated that at least one individual, namely § 87(2)(b) was outside of the deli and interacting with PO Navarro prior to § 87(2)(b) exiting the store. It is not settled when Lt. Willabus and PO Navarro first noticed § 87(2)(b) or § 87(2)(b) or for how long Lt. Willabus and PO Navarro observed the three individuals. In any case, § 87(2)(b) “unnecessary” movement that Lt. Willabus described observing is amenable to innocent explanation. Lt. Willabus did not provide any objective reason for finding § 87(2)(b) behavior suspicious or indicative of criminal activity. The investigation further credits PO Navarro’s testimony that he initiated the encounter because he perceived a bulge in a pocket of § 87(2)(b) winter jacket. In addition to PO Navarro’s statement, § 87(2)(b) and PO Andrade all stated that, within seconds of approaching § 87(2)(b) PO Navarro began questioning § 87(2)(b) about an ostensible bulge in his jacket pocket. PO Navarro acknowledged that the bulge was not a

sufficient predicate for a level-2 (common-law) inquiry. Although PO Navarro did not consider his encounter with § 87(2)(b) to exceed a level-1 request for information, the settled facts suggest that PO Navarro and Lt. Willabus stopped § 87(2)(b). A reasonable person would not feel free to end an encounter while surrounded by four officers, one of whom is encroaching closely upon his person, interrogating him about an ostensible bulge in his jacket pocket – and then searching his person. PO Navarro acknowledged that he had no particular beliefs about the cause of the bulge in § 87(2)(b) jacket pocket. He did not perceive the apparent outline of a weapon, but believed the bulge merely *could have* been caused by a weapon. § 87(2)(g)

§ 87(2)(g)

PO Navarro's only grounds for initiating this encounter was his observation of a non-descript pocket bulge, about which he had no particular beliefs. § 87(2)(g)

After discovering that § 87(2)(b) jacket pocket contained crumpled papers -- or, generally, did not contain an illegal weapon § 87(2)(g)

PO Navarro was required to discontinue his search, and, absent other reasonable suspicion, to discontinue his investigation as well. However, PO Navarro continued to frisk other parts of § 87(2)(b) clothing, as he acknowledged, and as is seen in footage recorded by La Vega grocery. § 87(2)(g)

§ 87(2)(b)'s testimony and footage from La Vega grocery establish that PO Andrade stopped § 87(2)(b). It is undisputed, however, that PO Andrade was acting, not on the basis of her own observations of § 87(2)(b) but rather in the belief that PO Navarro and Lt. Willabus, the ranking officer on scene, had stopped § 87(2)(b) and § 87(2)(b). Lt. Willabus acknowledged that he considered § 87(2)(b) as well as § 87(2)(b) to be stopped, at least after § 87(2)(b) was found to be in possession of a knife. The investigation has determined, therefore, that Lt. Willabus authorized the stop of § 87(2)(b) and that he, instead of PO Andrade, is ultimately responsible for the stop. Neither Lt. Willabus nor any other officer articulated any reasonable suspicion of § 87(2)(b).

§ 87(2)(g)

It is undisputed that § 87(2)(b) had a large kitchen knife in one of his pockets. However, it is not settled exactly when or how PO Dill discovered this knife – specifically whether PO Dill saw the knife in plain view and immediately handcuffed § 87(2)(b) found it in the course of frisking § 87(2)(b) or only discovered it at some point after he had handcuffed § 87(2)(b) § 87(2)(g)



**Allegation J: Police Officer Joshua Navarro used physical force against § 87(2)(b)**

**Allegation K: Police Officer Joshua Navarro used physical force against § 87(2)(b)**

A few minutes into the encounter PO Andrade attempted to place § 87(2)(b) into handcuffs. This is seen beginning at about 00:30 in the footage recorded by La Vega grocery [BR 10]. PO Andrade explained that as PO Dill was attempting to handcuff § 87(2)(b) tried to remove PO Dill's hand from § 87(2)(b) hand. PO Andrade then attempted to place § 87(2)(b) under arrest. Body-worn camera footage recorded by PO Andrade, during the buffer period before she activated the camera, shows some type of altercation between her and § 87(2)(b). At 00:09, § 87(2)(b) looks toward her left, where § 87(2)(b) was standing, and appears to become agitated. PO Andrade physically engages § 87(2)(b) although the nature of this engagement cannot be determined from the footage. It is evident that PO Andrade is attempting to handcuff § 87(2)(b) at 00:19. These events are also captured in the La Vega footage, beginning at 00:30.

According to § 87(2)(b) he was facing the wall of La Vega grocery, as PO Navarro frisked his waistband and pockets, in the minutes before PO Andrade attempted to handcuff § 87(2)(b). As noted above, footage from La Vega grocery apparently shows PO Navarro frisking the right side of § 87(2)(b) jacket or pants between 00:15 and 00:30 [BR 10]. § 87(2)(b) denied that he resisted PO Navarro. He further denied that he attempted to interfere with PO Andrade as she was interacting with § 87(2)(b). § 87(2)(b) also denied this. § 87(2)(b) stated that he might have reached toward § 87(2)(b) at some point during the stop, in an effort to make her calm down, but that he did not attempt to touch PO Andrade or prevent her from handcuffing § 87(2)(b).

Each member of service interviewed for this case stated that he or she was almost solely focused on the subject with whom he or she was interacting. As a result, officers provided widely varying accounts of the actions that other involved officers took, especially toward the end of the incident. All members of service were consistent, however, that at some point during the stop, § 87(2)(b) attempted to interfere with PO Andrade as she engaged with § 87(2)(b).

Officers differed in their descriptions of the nature and severity of § 87(2)(b) interference. According to a Threat, Resistance, and Injury Report (TRI) prepared by PO Navarro [BR 18], § 87(2)(b) tried to prevent PO Andrade from handcuffing § 87(2)(b). The TRI reads § 87(2)(b) attempted to remove another officer's hand from the arm of another subject in order to prevent that officer from placing another subject into custody. [PO Navarro] gave verbal commands and removed subject's hand from other officer's arm." The report for § 87(2)(b) arrest [BR 19] is consistent with the TRI. During his interview, PO Navarro stated that § 87(2)(b) reached his arm out toward PO Andrade as she was handcuffing § 87(2)(b). PO Navarro grabbed § 87(2)(b) hand, however, before § 87(2)(b) was able to make any physical contact with PO Andrade. PO Andrade stated that as she attempted to fasten a handcuff around one of § 87(2)(b) wrists, § 87(2)(b) swatted her arm away. PO Andrade and PO Navarro both told § 87(2)(b) to stop interfering. However, § 87(2)(b) swatted PO Andrade's hand a second time, while saying "leave my girlfriend alone; don't arrest my girlfriend." Lt. Willabus stated that § 87(2)(b) attempted to push his way past § 87(2)(b) and PO Dill, in order to get to PO Andrade and prevent her from arresting § 87(2)(b). (Lt. Willabus's recollection was that § 87(2)(b) was standing in between § 87(2)(b) and § 87(2)(b) which is contradicted by the footage.)

The footage obtained from La Vega grocery does not capture the entire incident. However, the footage [BR 11] does appear to capture § 87(2)(b) making some sort of physical contact with § 87(2)(b) as she interacts with PO Andrade. PO Navarro is then seen restraining both of § 87(2)(b) hands. However, PO Andrade is not seen attempting to handcuff § 87(2)(b) during this clip, and there is no evidence that § 87(2)(b) is attempting to interfere with PO Andrade.

After § 87(2)(b) had reached toward PO Andrade, according to PO Navarro, he warned § 87(2)(b) to not interfere with § 87(2)(b) arrest, and then turned § 87(2)(b) around, so that he



was facing the wall of La Vega grocery. In order to gain control of § 87(2)(b) and to restrict his range of motion, PO Navarro pressed his body against § 87(2)(b) back. § 87(2)(b) continued to move, however; PO Navarro felt as though he was grappling with § 87(2)(b). He was concerned that § 87(2)(b) was trying to break away -- and given that § 87(2)(b) had just attempted to interfere with an arrest, PO Navarro was concerned that § 87(2)(b) might become violent toward him or another officer. PO Navarro determined that it was necessary to place § 87(2)(b) in handcuffs, but that it wouldn't be possible to handcuff § 87(2)(b) so long as he kept moving his body. Therefore, in an effort to disorient § 87(2)(b), PO Navarro threw two punches to the back of § 87(2)(b) head. PO Navarro explained that his punches failed to make solid contact with § 87(2)(b) head, so he determined it was necessary to use a forcible takedown. The punches and forcible take down are captured clearly in one of the clips from the La Vega grocery footage [BR 20].

The footage obtained from La Vega grocery skips from the moments when PO Navarro and § 87(2)(b) are interacting face-to-face to some later time, when § 87(2)(b) is facing the wall of La Vega grocery. Between about 00:15 and 00:31 in the video of the broader incident [BR 10], PO Navarro appears to be frisking the right side of § 87(2)(b) pants or jacket. Beginning at 00:31, PO Andrade apparently is attempting to place § 87(2)(b) under arrest. There is no indication that § 87(2)(b) is resisting PO Navarro or interfering with PO Andrade's arrest. On the contrary, § 87(2)(b) right arm is apparently pinned or at least restricted by PO Navarro's arm and body. Furthermore, in contradiction of PO Navarro's statement, the footage does not show § 87(2)(b) -- who is 5'8" and 145 lbs -- moving excessively or grappling with PO Navarro. At 00:02 seconds in the clearest depiction of PO Navarro's use of force [BR 20], PO Navarro is seen applying the weight of his body against § 87(2)(b) back; it appears that PO Navarro has § 87(2)(b) pinned to the wall of La Vega grocery. He releases his grip on § 87(2)(b) at 00:03 seconds, only to cock back his fist and punch § 87(2)(b). PO Navarro's second punch clearly makes solid contact with § 87(2)(b) head, which is propelled forward by the force of the punch. It is undisputed that PO Navarro then lifted § 87(2)(b) off the ground by about two feet, and brought him forcibly to the ground. It is undisputed that PO Navarro was then able to handcuff § 87(2)(b) without further incident. According to the report for § 87(2)(b) arrest, he was charged with obstruction of governmental administration, resisting arrest, and disorderly conduct. (Note that the investigation was unable to locate a docket for the resulting criminal case on the New York City Office of Court Administration). § 87(2)(b) and § 87(2)(b) were each charged with disorderly conduct. The CCRB received the summons that PO Andrade issued to § 87(2)(b) [BR 21]. The CCRB's request for the summons issued to § 87(2)(b) yielded negative results.

Documents received from the § 87(2)(b) Medical Center [BR 22] show that § 87(2)(b) was a walk-in patient on § 87(2)(b). He reported that he was punched twice in the right ear and forcibly taken to the ground. His chief complaints were "aching, throbbing" head pain (see pages 5 and 23) and a ringing sensation in his right ear (see page 17), as well as pain and swelling in his right wrist (see pages 5 and 17). It is noted that he suffered from "no obvious head injuries" and that his gait was steady. He is noted to be suffering from myalgias, that is, soreness and achiness in the muscles (that can range from mild to severe). An x-ray was administered, and revealed mild tissue swelling in § 87(2)(b) right wrist, with no evidence of fracture (see page 19).

NY CLS Penal § 195.05 provides that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by mean of intimidation, physical force or interference. New York Penal Law § 195.05 [BR 23].

Under NYPD PG 221.01, officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any use of force must be reasonable under the circumstances. MOS will use only the reasonable force necessary to gain control or custody of a subject. In assessing the use of force, the following should be considered: nature and severity of the crime/circumstances, actions taken by the subject, immediacy of the perceived threat or harm to members of service, whether the subject is actively resisting custody, number of subjects in comparison to the number of MOS, as well as the size, age and condition of the subject in comparison to the MOS. NYPD Patrol Guide 221.01 [BR 24].

It is undisputed that PO Navarro used two hand strikes against § 87(2)(b) and then took him forcibly to the ground. There is no video evidence that § 87(2)(b) attempted to interfere with PO Andrade's arrest of § 87(2)(b). The video evidence contradicts Lt. Willabus's statement that § 87(2)(b) tried to push his way past other subjects and officers in order to prevent § 87(2)(b) from being handcuffed. There is some indication, however, that § 87(2)(b) did reach toward and possibly make physical contact with § 87(2)(b) as she interacted with PO Andrade. Against PO Navarro's statement, footage shows that § 87(2)(b) was not moving excessively or resisting in the moments before PO Navarro punched § 87(2)(b). § 87(2)(g)

On the contrary, PO Navarro significantly outweighed § 87(2)(b) and appears in all footage to be in physical control of § 87(2)(b). moreover, there were four officers on scene, compared to three subjects. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which any of § 87(2)(b) and § 87(2)(b) have been a party [BR 26, 27, and 28].
- PO Navarro has been a member of service for six years, over which time he has been the subject of seven other complaints and twenty three allegations.
  - Case 201808163 involved a substantiated allegation of frisk, which resulted in formalized training
- PO Andrade has been a member of service for five years, over which time she has been the subject of two other case and nine allegations, none of which have been substantiated.
- PO Dill has been a member of service for eighteen years, over which time he has been a subject of three other complaints and thirteen allegations, four of which have been substantiated.
  - Case 201902877 involved substantiated allegations of stop, frisk, threat of arrest, and failure to provide RTKA card, which resulted in command discipline.
- Lt. Willabus has been a member of service for sixteen years, over which time he has been the subject of 12 other complaints and 28 allegations, one of which was substantiated.
  - Case 200700641 involved a substantiated allegation of detainment, which resulted in no NYPD discipline.
- The CCRB is in possession of employment history summaries for PO Navarro [BR 32] and PO Andrade [BR 33].

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- On January 27<sup>th</sup>, 2021, a query was submitted to the NYC Comptroller's Office for any notices of claim related to this incident. The results will be added to the case file upon receipt.

Squad No.: 7

Investigator: Will Rasenberger      Investigator Will Rasenberger      01/27/2021  
Signature      Print Title & Name      Date

Manager Vanessa Rosen      2/12/2021

CCRB Case # 202000571



Squad Leader: \_\_\_\_\_  
Signature                      Print Title & Name                      Date

Reviewer: \_\_\_\_\_  
Signature                      Print Title & Name                      Date